IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

MFA.No. 710 of 2001

OPMV.422/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT/3RD RESPONDENT:

M/S. UNITED INDIA INSURANCE CO. LTD.,
MANNARKAD BRANCH, PALAKKAD DIST.,
REP. BY ITS ASSISTANT MANAGER, THIRD PARTY
CLAIMS CELL, MG ROAD, ERNAKULAM.

BY ADV. SMT.P.A.REZIYA

RESPONDENTS/PETITIONERS/ RESPONDETS 1 AND 2 :
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1. **MRS. PARUKUTTY AMMA, W/O. LATE APPUKUTTAN GUPTHAN, AGED 55 YRS, CHOLAYIL HOUSE, THATHALLUR POST, MANNARKAD, PALAKKAD.**

2 **VIJAYAKUMAR, S/O. LATE APPUKUTTAN GUPTHAN, AGED 30 YRS, CHOLAYIL HOUSE, CHATHALLUR POST, MANNAKAD, PALAKKAD.**

3. **MOHANDAS, S/O. LATE APPUKUTTAN GUPTHAN, -DO- -DO-**

4. **MURALEEDHARAN, S/O. LATE APPUKUTTAN GUPTHAN, AGED 15 YRS, MINOR, REP. BY GUARDIAN MOTHER, THE FIRST PETITIONER, CHOLAYIL HOUSE, -DO- -DO-**

5. **GOVINDANKUTTY, PARAKKAPADATHU VEEDU, CHATHALLUR POST, MANNARKKAD, PALAKKAD.**

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6. C.K. YAKUTTY, S/O. KOYAKUTTY HAJI,
AGED NOT KNOWN, CHANGARAKKATTIL HOUSE,
CLARIMOODHIKKAL, KOTTAKKAL, TIRUR,
MALAPPURAM DIST., KUTTIPPALA.

BY ADV. SRI.THAMPAN THOMAS
SRI.SHAFFIE THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER ON CMP NO. 5800/2001 IN M.F.A NO. 710/2001.

DISMISSED

14/08/2007. **SD/- J.B.KOSHY, JUDGE.**
SD/- V.GIRI, JUDGE.

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J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.710 OF 2001

Dated 14th August, 2007

JUDGMENT

Koshy,J.

This appeal is filed by the insurance company contending that the driver of the vehicle insured by it had no effective driving licence on the date of accident and hence insurance company is not liable to pay the compensation. It is submitted that a petty case was charged against the driver, but, there is no evidence to show that he was convicted. Further, the Tribunal also found as follows:

> "There is no evidence to prove that R1 was not possessed of D.L. to drive the offending vehicle. So also there is no evidence to prove that R2 knowingly entrusted the vehicle for driving by an unlicenced driver. 3rd respondent has validly insured the vehicle. So it is liable to indemnify the claim."

In ***National Insurance Co. Ltd.*** v. ***Swaran Singh and others*** (AIR 2004 SC 1531) the Apex Court has considered the matter in detail and at paragraph 105 the points were summarised. Point Nos.1, 3, 4, 5 and 6 are as follows:

> "1. Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a

social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

xx xx xx xx

3. The breach of policy condition, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

4. The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish `breach' on the part of the owner of the vehicle; the burden of proof therefore would be on them.

5. The court cannot lay down any criteria as to how said burden would be discharged, in as much as the same would depend upon the facts and circumstances of each case.

6. Even where the insurer is able to prove breach on the part of the insured

> concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act."

Here, there was no evidence to show that the owner (insured) was negligent in entrusting the vehicle to first respondent knowing that he was not having proper licence and insurance company has not proved that the driver was not having valid driving licence and the matter was considered by the Tribunal. In view of the above decision of the Apex Court, we see no ground to interfere with the award.

The appeal is dismissed.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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